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Suit by Annie B. Adams and another against Mary Reynolds and others. From a decree in favor of plaintiffs, defendants appeal. Affirmed.

Isaac Diggs, of Richmond, and *J. W. Fleet*, of Biscoe, for appellants.

G. B. White, of Richmond, *H. I. Lewis*, of West Point, and *J. D. Mitchell*, of Walkerton, for appellees.

H. N. FRANCIS & CO., Inc. v. HOTEL RUEGER, Inc.

June 12, 1919.

[99 S. E. 690.]

1. Mechanics' Liens (§ 5*)—Liberal or Strict Construction—Statutes.—That part of a mechanics' lien statute relating to creation of the lien must substantially be complied with, but the provisions regarding its enforcement will be liberally construed; Code 1904 § 2478, providing that no inaccuracy in the account or description of the property shall invalidate the lien, if the description reasonably identifies the property and the account conforms substantially with sections 2476, 2477, and is not false.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 757.]

2. Mechanics' Liens (§ 149 (3)*)—Subcontractor's Lien—Open Account—Particularity of Statement Required.—Where a lien claim of a subcontractor rests upon open account, more particularity of statement, as to specifying the amount and character of the work done, materials furnished, and prices charged therefor, is required than where the work done or materials furnished were contracted for as an entirety.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 769.]

3. Mechanics' Liens (§ 149 (2)*)—Subcontractor's Lien—Statement in Account—Construction.—Statement, in an account upon which a subcontractor's lien is based, that certain work was done or materials furnished under agreement or contract for a specific sum, is equivalent to saying that it was under an express contract or was contracted for as an entirety.

4. Mechanics' Liens (§ 149 (2)*)—Subcontractor's Lien—Statement of Account—Sufficiency.—Where an account upon which a subcontractor's lien is based contains a statement that certain work was done or materials furnished under agreement or contract for specific sum, and the evidence establishes that the work and materials were contracted for as an entirety, a general statement of the fact and the sum charged therefor under the contract will be sufficient.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 769.]

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

5. Mechanics' Liens (§ 149 (3)*)—Subcontractors' Liens—Account Statement—General Items—Sufficiency.—Accounts upon which subcontractors' liens are based, some of which contain general items such as "by contract \$10,000," will be upheld, where the account on its face bears evidence of the character of the work done, materials furnished, and prices charged, and where each item, if read together with the rest of the account and aided by evidence in support thereof, shows compliance with the statutory requirements.

[Ed. Note.—For other cases, see 9 Va.-W. Va. Enc. Dig. 770.]

6. Mechanics' Liens (§ 226*)—Contractor's Lien—Deposit by Owner in Court—Personal Liability.—Where the owner of a building, upon being notified of certain claims for liens by subcontractors, set apart a fund sufficient to discharge such liens and paid such fund into court for a determination of the amounts due the respective claimants, and such fund is the subject of the controversy, there is no personal liability of the owner for any of such liens.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 704.]

7. Mechanics' Liens (§ 260 (6)*)—Time for Filing—Statute of Limitations—Effect.—Where a subcontractor's lien claimant was not a party to prior suits by other claimants and did not file its account until after the lien was barred by Code 1904, § 2481, its claim cannot be allowed in a later suit brought by the owner to determine the validity of the liens of the respective claimants, to which suit all claimants became parties.

8. Mechanics' Liens (§ 226*)—Subcontractor's Lien—Rights as to Money Due to Principal Contractor.—Where the owner of the building constructed has deposited with the court a fund due the insolvent contractor, for determination of the claims of various subcontractors, the liens allowed must share ratably in such fund after first deducting therefrom the cost of litigation, with respect to the allowed claims.

[Ed. Note.—For other cases, see 17 Va.-W. Va. Enc. Dig. 704.]

Appeal from Chancery Court of Richmond.

Suit by the Hotel Rueger, Incorporated, against F. Nesbit & Co., a corporation, H. N. Francis & Co., Incorporated, and other subcontractors, praying that mechanic's lien claimants be convened, the validity of their claims determined, and an amount in the hands of complainant due F. T. Nesbit & Co., contractor, be ascertained and applied to the payment of such liens as are valid. From the decree of the chancery court, overruling the exceptions of H. N. Francis & Co., and others to the report of the commissioner to whom the claims had been re-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.

ferred, disallowing their respective claims of liens, they appeal. Affirmed, in so far as it denied personal liability on Hotel Rueger, and disallowed the claim of the Warren-Ehret Company, and allowed in part the claim Engleby & Bros., Incorporated, and reversed in so far as it disallowed the liens of H. N. Francis & Co., and others. Remanded, with directions.

H. R. Miller, of Richmond, for appellant, Warren-Ehret Co.

John B. Minor, of Richmond, for appellant, Standard Engineering Co.

S. S. P. Patteson, of Richmond, for appellant, Pittsburg Plate Glass Co.

A. W. Patterson, of Richmond, for appellant, H. N. Francis & Co.

R. E. Scott and Williams & Mullen, all of Richmond, for appellee.

SCHMIDT et al. v. WALLINGER.

June 12, 1919.

[99 S. E. 680.]

1. Parties ($\S\ 92$ (3)*)—**Misjoinder—Demurrer.**—Under Code, 1904, § 3258a, an objection of misjoinder of parties in an action at law cannot be reached by demurrer, but only by motion to abate the action as to the parties improperly joined.

[Ed. Note.—For other cases, see 10 Va.-W. Va. Enc. Dig. 756, 757.]

2. Action ($\S\ 28$ *)—**Tort—Waiver of Tort.**—A declaration in assumpsit by a landowner against real estate men for fraudulent profits is not defective because one count alleged a tortious transaction; for the landowner might waive the tort and rely on the implied promise to pay money which in good conscience was hers.

[Ed. Note.—For other cases, see 1 Va.-W. Va. Enc. Dig. 128; 2 Va.-W. Va. Enc. Dig. 58.]

3. Brokers ($\S\ 38$ (3)*)—**Secret Profit—Declaration.**—A declaration by the owner of city property against brokers whom she had engaged to trade it for farm land, which alleged that they fraudulently misrepresented the price at which the owner of the farm land was willing to dispose of the same, and thus made a secret profit, held not open to demurrer on the ground that it did not aver the brokers were not mere middlemen.

[Ed. Note.—For other cases, see 2 Va.-W. Va. Enc. Dig. 636.]

4. Brokers ($\S\ 38$ (3)*)—**Fraud—Declaration—“Scienter.”**—A declaration by the owner of city property against brokers whom she engaged to trade it for farm land, which alleged that they fraudu-

*For other cases see same topic and KEY-NUMBER in all Key-Numbered Digests and Indexes.